

**PUBLIC HEARING**

**ON**

**Bill 18-0098” The Small Business Loan Authority Act of 2009”**

**Before the  
Committee on Economic Development  
Council of the District of Columbia**

**The Honorable Kwame R. Brown, Chairman**

**November 19, 2010, 11:00 a.m.  
John A. Wilson Building, Room 412**



**Testimony of  
John Ross  
Senior Advisor and Director of Economic Development Finance  
Office of the Chief Financial Officer**

**Natwar M. Gandhi  
Chief Financial Officer  
Government of the District of Columbia**

Good morning, Chairman Brown and Members of the Committee on Economic Development. My name is John Ross, Senior Advisor and Director of Economic Development Finance for the Office of the Chief Financial Officer. I am here to testify on the Small Business Loan Authority Act of 2009, Bill 18-98. Accompanying me is Stephen B. Lyons, Deputy General Counsel in the Office of the Chief Financial Officer.

We preface our statements with the caution that we are relying on our understanding of the current state of the Neighborhood Economic Development Corporation (or NEDCO) 's corporate documents and assumption that it has been inactive in the past two years. The OCFO Fiscal Impact Statement issued December 2008 states that funds are sufficient to implement the proposed legislation. No additional funding would be required to reauthorize the District's participation in NEDCO. However, we have several concerns about the proposed legislation. Despite these concerns, we would welcome the opportunity to begin conversations with representatives of NEDCO and the Mayor's Office aimed toward a District-NEDCO structure that could achieve the economic development goals of the parties while better protecting the District's investment in compliance with law.

The legislation delegates to the Mayor the authority, at his discretion, to continue, restructure, reinvest, increase, decrease or make new equity investments in, and loans to, NEDCO in any amounts, and at any time. NEDCO is an entity incorporated in 1985 with District participation. The District invested about \$6 million in NEDCO through an equity

investment of Class B shares and a subordinated debenture. These investments do not result in control of NEDCO, as NEDCO is controlled by a board on which the District has a minority of seats. NEDCO's Class A shareholders, consisting of private banks and other private entities, control NEDCO's board.

Because the District has only minority representation on NEDCO's Board of Directors, it will be difficult for the District to manage its investment in a fiscally prudent manner. Moreover, this lack of control may prevent the ability of the Mayor to issue rules to establish NEDCO's lending standards, as provided for in the legislation. Finally, OCFO lawyers have also expressed concern that delegating to the Mayor authority to place (in the form of an investment) public money in the control of a private organization may be in conflict with Home Rule Act; Section 424(d)(12) that requires the Chief Financial Officer of the District to maintain "custody of all investment and invested funds of the District government."

Finally, the NEDCO structure contains subordination provisions that provide the private shareholders a guaranteed return in the event of liquidation. Although NEDCO is currently inactive, if it resumes its stated purpose to loan or make investments in business enterprises, there is a risk its net assets may decline. Moreover, the District would disproportionately bear the burden of such a decline. In short, the District is guaranteeing loans made by private parties to private parties, and our attorneys believe that this arrangement, as currently structured and in light of the broad delegation of authority to the Mayor cited above,

violates Section 1-206.02(a)(2) of the Home Rule Act, which prohibits the District from “lend[ing] the public credit for support of any private undertaking.”

If the Council approves the legislation, the OCFO recommends changes to the legislation to:

- (1) require receipt of updated audited financial statements from NEDCO, as no recent audits have been finalized;
- (2) require that before the Mayor may make future loans to NEDCO or investments in NEDCO, that the OCFO certify that funds are available for such purposes; and
- (3) place a limit or cap on the amount of future loans or investments that the Mayor may make without further authority from the Council.

Other changes at NEDCO would increase the security of the District’s investment, including an increase in District board representation and changes to the subordination provisions.

Thank you for the opportunity to testify. This concludes my testimony and I am happy to answer any questions you have at this time.